

148 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, John R. Norris,
Tony Clark, and Norman C. Bay.

Central Hudson Gas and Electric Corporation

Docket No. AC14-78-000

ORDER DENYING MOTION FOR CONFIDENTIAL TREATMENT

(Issued August 18, 2014)

1. On April 15, 2014, Central Hudson Gas & Electric Corporation (Central Hudson) filed, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (2012), the Privacy Act, 5 U.S.C. § 552a (2012), and the Commission's rules and regulations, 18 C.F.R. § 388.112 (2014), a motion for confidential treatment of certain information. Specifically, Central Hudson requests that the Commission treat as confidential the information on page 104 of FERC Form No. 1.¹ As discussed below, we deny Central Hudson's request.

I. Background

2. Central Hudson states that it is a natural gas distribution company whose activities are subject to the jurisdiction of the Commission and the New State Public Service Commission (New York Commission). Central Hudson states that it is engaged in the business of transmitting and distributing electricity and natural gas in the Hudson Valley in New York, and that it serves approximately 300,000 retail electric customers and 75,000 retail natural gas customers. Central Hudson notes that it operates in the New York Independent System Operator (NYISO) wholesale electric market, purchases natural gas in the wholesale natural gas market, and is connected to upstream interstate natural gas pipelines.²

3. Central Hudson explains that, as a result of the State of New York restructuring its electric markets in the 1990s, Central Hudson divested most of its generating assets and retained only small hydroelectric facilities. In addition, Central Hudson states that it no

¹ Central Hudson Gas & Electric Corporation's Motion for Confidential Treatment, Docket No. AC14-78-000 (filed Apr. 15, 2014) (Central Hudson Motion).

² *Id.* at 1-2.

longer operates under a Commission-approved Open Access Transmission Tariff (OATT)³ and instead operates pursuant to a Market-Based Rate Tariff. Central Hudson asserts that it recovers no salaries, including officers' compensation, through Commission rates (electric or natural gas).

4. Central Hudson also notes that the Commission and the New York Commission both previously approved the indirect acquisition of Central Hudson by Fortis, Inc. (Fortis Transaction).⁴ According to Central Hudson, following that transaction, Central Hudson's parent corporation, CH Energy Group, Inc. (Central Hudson Energy), ceased to be a publicly-traded company on the New York Stock Exchange. Central Hudson explains that since Central Hudson Energy is no longer publicly traded, both it and its parent corporation are no longer subject to certain requirements, including the requirement to report the names and compensation of its five highest paid officers.

II. Motion for Confidential Treatment

5. Central Hudson requests that the Commission afford confidential status to the information set forth on page 104 of FERC Form No. 1, which consists of lists of Central Hudson's officers by position, name, and salary. Central Hudson asserts that such information is exempt from public disclosure pursuant to the Freedom of Information Act, and is personal privacy information subject to protection pursuant to the Freedom of Information Act, the Privacy Act, and section 388.112 of the Commission's regulations.⁵

6. Central Hudson claims that the protected material is not publicly available in any forum. Central Hudson states that while it did file similar information publicly in prior years because Central Hudson Energy was publicly traded, Central Hudson Energy is no longer publicly-traded and no longer subject to the same requirements. In addition, Central Hudson contends that filing the information would not serve a public purpose because the information is not used by the Commission or ratepayers in any ratemaking process and its officers' salaries are not recovered through any Commission rates.⁶

³ Central Hudson states that its OATT was canceled in 2010. *Id.* at 3. Transmission service over Central Hudson's facilities is provided pursuant to NYSIO's OATT, and the costs of providing that service are recovered through NYISO's OATT.

⁴ *See Fortis, Inc.*, 140 FERC ¶ 62,004 (2012) (*Fortis*).

⁵ Central Hudson also asserts that the information is personal privacy information pursuant to the New York Commission's regulations. Central Hudson Motion at 3 (citing 16 NYCRR Part 6-2).

⁶ *Id.*

7. Central Hudson argues that the material should not be disclosed under the Privacy Act because “the information is ‘about’ the individual officers and will create a ‘record’ when filed” with the Commission.⁷ According to Central Hudson, the information “is ‘about’ each officer individually because it names each respective officer, their salary and position. In other words, the information contains each ‘individual’s name or other identifying particular.’”⁸ Central Hudson states that the material would create a record because it is an “‘item of information about an individual.’”⁹

III. Commission Determination

8. The Commission denies Central Hudson’s request to treat the information on page 104 of FERC Form No. 1 as confidential.

9. As an initial matter, although Central Hudson claims that the information on page 104 of FERC Form No. 1 is exempt from disclosure pursuant to the Freedom of Information Act, Central Hudson fails to state or explain which exemption of that act it believes applies to the information. The courts have consistently recognized that “the basic thrust” of the Freedom of Information Act is that official information shall be made available to the public for public inspection.¹⁰ While the Freedom of Information Act includes exemptions from compelled disclosure, these exemptions are limited and construed narrowly.¹¹ Given that Central Hudson fails to identify which exemption it believes applies to the information on page 104 of FERC Form No. 1, the Commission cannot effectively evaluate its claim that the information is exempt from disclosure

⁷ *Id.*

⁸ *Id.* at 4 (quoting *Tripp v. Dep’t of Def.*, 193 F.Supp.2d 299, 236 (D.D.C. 2002) (*Tripp*)).

⁹ *Id.*

¹⁰ *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (*Rose*); *see also Washington Post Co. v. Dep’t of Health and Human Serv.*, 690 F.2d 252, 259 (D.C. Cir. 1982) (“...in [Freedom of Information Act] cases, ‘the presumption in favor of disclosure is at its zenith’” (quoting *Grolier, Inc. v. FTC*, 671 F.2d 553, 556 (D.C. Cir. 1982))); *News-Press v. Dep’t of Homeland Security*, 489 F.3d 1173, 1189 (11th Cir. 2007) (*News-Press*) (“The [Freedom of Information Act], in turn, generally requires federal agencies to disclose records in their possession upon request, but permits agencies to withhold records if one of several exemptions applies...”).

¹¹ *See, e.g., Rose*, 425 U.S. 352 at 361 (“‘These exemptions are explicitly made exclusive...,’ and must be narrowly construed” (quoting *EPA v. Mink*, 410 U.S. 73, 79 (1973))).

pursuant to the Freedom of Information Act. Similarly, Central Hudson's reliance on *Tripp*, a case arising, in part, under the Privacy Act, and the only case Central Hudson cites in support of its request, is misplaced. With respect to the interaction between the Privacy Act and the Freedom of Information Act, the courts have stated that the "net effect of the interaction between the two statutes is that where [the Freedom of Information Act] requires disclosure, the Privacy Act will not stand in its way, but where the [Freedom of Information Act] would permit withholding under an exemption, the Privacy Act makes such withholding mandatory upon the agency."¹² As Central Hudson has not provided any support for its exemption claim under the Freedom of Information Act, the Commission cannot effectively evaluate Central Hudson's claims under either the Privacy Act or the Freedom of Information Act.

10. Further, as the Commission has explained on prior occasions, the information provided in FERC Form No. 1 "is necessary to carry out our jurisdictional responsibilities and is used, among other things, to evaluate the reasonableness of cost-based rates subject to our jurisdiction and the operation of power markets."¹³ Thus, while entities that do not sell at cost-based rates may request waiver from the requirements of Part 141 of the Commission's regulations (including the requirement to file FERC Form No. 1),¹⁴ the Commission typically does not grant such waiver to those selling at cost-based

¹² *News-Press*, 489 F.3d 1173, 1189 (citing *Cochran v. United States*, 770 F.2d 949 (11th Cir. 1985)).

¹³ *Alcoa Power Generating Inc.*, 147 FERC ¶ 61,136, at P 14 (2014) (*Alcoa Power Generating*) (quoting *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at P 31,851 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

¹⁴ The Commission acknowledges that Central Hudson does not seek waiver of the requirements of FERC Form No. 1, but instead requests that the Commission approve its motion for confidential treatment and accept for filing a redacted version of FERC Form No. 1. The same logic for denying waiver of the requirements of FERC Form No. 1, however, applies to denying the motion for confidential treatment. Preventing public inspection of the information on page 104 of Central Hudson's FERC Form No. 1, whether because of waiver or confidential treatment, would result in reduced transparency, adversely affecting the public's ability to evaluate the reasonableness of the rates they may be subject to.

rates.¹⁵ Although Central Hudson states that it operates pursuant to a Market-Based Rate Tariff (and implies that its rates are not based on its costs), Central Hudson provides interconnection service pursuant to a cost-based interconnection agreement that is on file with the Commission.¹⁶ In addition, Central Hudson recovers its costs of providing transmission service through NYISO OATT's cost-based transmission revenue requirement. As the Commission requires FERC Form No. 1 data to evaluate the reasonableness of cost-based rates subject to its jurisdiction, Central Hudson's request for confidential treatment is denied.¹⁷

¹⁵ *Alcoa Power Generating*, 147 FERC ¶ 61,136 at P 13. *See also Hudson Trans. Partners, LLC*, 135 FERC ¶ 61,104, at P 43 (2011) ("The Commission has traditionally granted waivers and blanket authorizations only to those entities that are not subject to traditional cost-based regulation."); *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 66 (2006) ("For public utilities with cost-based rates, the information provided in [FERC] Form No. 1 is necessary to ensure that rates are reasonable."). Part 141 of the Commission's regulations establishes the reporting requirements for several FERC forms, including FERC Form No. 1. *See* 18 C.F.R. pt. 141 (2014).

¹⁶ *See* No. 260, Interconnection Agreement for Roseton Gen Station, 1.0.0, under Central Hudson's tariff. Pursuant to this agreement, Central Hudson provides interconnection service for the Roseton Generating Station. *See Central Hudson Gas & Electric Corporation*, Docket No. ER13-1342-000, at 1 (May 29, 2013) (delegated letter order).

¹⁷ In its application for approval of the Fortis Transaction, the applicants, including Central Hudson and Central Hudson Energy, averred that the transaction would not diminish the Commission's regulatory authority; create a regulatory gap or shift regulatory authority between the Commission and any state commission; or impair the Commission's jurisdiction. *See Application for Authorization for Merger and Disposition of Jurisdictional Facilities, and Request for Waivers of Certain Filing Requirements* at 23, Docket No. EC12-94-000 (Apr. 23, 2012). The Fortis Transaction was authorized "upon the terms and conditions and for the purposes set forth in the application." *See generally Fortis*, 140 FERC ¶ 62,004 at 64,010-11.

The Commission orders:

Central Hudson's request for confidential treatment is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.